

## MINUTES

### ALCOHOL AND TOBACCO COMMISSION

SEPTEMBER 18, 2007

#### CALL TO ORDER/NOTING OF QUORUM

Chairman Heath called the meeting to order and noted the quorum and the attendance. Present were Vice Chairman Johnson, Commissioner Sturtz and Commissioner Guthrie. Also in attendance were Executive Secretary Choe, Superintendent Huskey and Major Poindexter.

Marc Carmichael, Debbie Scott of IABR, Jeff McKean, Lisa Goldner, Bart Herriman, Jim Purucker and Mark Webb were present as observers.

#### DISPOSITION OF MINUTES

Commissioner Sturtz moved to approve the minutes that were submitted for the September 4, 2007 meeting. Motion seconded by Commissioner Guthrie and it was unanimously approved.

#### HEARING JUDGE'S RECOMMENDATIONS

PAD FORMS – Vice Chairman Johnson moved to approve the parties agreed disposition forms that were submitted for the September 18, 2007 meeting. Motion seconded by Commissioner Guthrie and it was unanimously approved.

#### CONSIDERATION OF APPLICATIONS

I incorporate by reference these lists of permits for renewal, which have been recommended by local boards and reviewed by said staff with the authority of the Commission, and hereby move for approval of same and the inclusion of these lists as part of the minutes by exhibit. Motion seconded by Vice Chairman Johnson and it was unanimously approved.

I incorporate by reference these lists of permit applications for a new permit or application for changes in location or ownership or both of existing permits, which have been recommended by local boards and reviewed by at least two Commissioners and hereby move for approval of same and inclusion of these lists as part of the minutes by exhibit. Motion seconded by Vice Chairman Johnson and it was unanimously approved.

I incorporate by reference these lists of permit applications for catering and hereby move for approval of same and the inclusion of these lists as part of the minutes by exhibit. Motion seconded by Vice Chairman Johnson and it was unanimously approved.

I incorporate by reference these lists of permits to be placed in escrow for not more than one year, which have been reviewed and recommended by a Commissioner as appropriate for first or second year escrow and hereby move for approval of same and the

inclusion of these lists as part of the minutes by exhibit. Motion seconded by Vice Chairman Johnson and it was unanimously approved.

Four hundred one (401) renewals approved, sixty-six (66) new and/or transfer permits approved, thirteen (13) permits approved for catering, four (4) permits approved for first year escrow, one (1) permit approved for second year escrow and five (5) permits approved for third year escrow.

### **RENEWAL LETTERS AND WAIVER OF FEES**

Vice Chairman Johnson moved to approve the renewal letters and the waiver of fees for letters of extension for the preceding weeks. Motion seconded by Commissioner Sturtz and it was unanimously approved.

### **APPLICATIONS FOR DISCUSSION**

RR29-22144 SITEWORKS REALTY CORPORATION – Chairman Heath noted this is a new type 210 application with the local board voting four (4) to zero (0) to disapprove.

Commissioner Guthrie moved to uphold the local board's recommendation and deny the new permit. Motion seconded by Vice Chairman Johnson and it was unanimously approved.

DL82-08380 HENRY C. PREHER, D/B/A BELLEMEADE LIQUORS – Chairman Heath noted this is a type 217 renewal application with the local board voting four (4) to zero (0) to approve for one year.

Commissioner Guthrie moved to uphold the local board's recommendation and approve the renewal. Motion seconded by Commissioner Sturtz and it was unanimously approved.

RR18-07526 RA-DA-RNA, INC., D/B/A RED SLIPPER – Chairman Heath noted this is a type 210 renewal application with the local board voting four (4) to zero (0) to disapprove.

Commissioner Guthrie stated the local board's recommendation was based on the reputation and character of the permittee and also the fact that the establishment had become a public nuisance.

Commissioner Guthrie moved to uphold the local board's recommendation and deny the renewal. Motion seconded by Vice Chairman Johnson and it was unanimously approved.

RR46-06543 1103-05, INC., D/B/A SULLIVANS – Chairman Heath noted this is a type 210 renewal application with the local board voting four (4) to zero (0) to disapprove.

Commissioner Guthrie stated the local board's recommendation was based on the reputation and character of the permittee and also because of the numerous police calls to the establishment.

Commissioner Guthrie moved to uphold the local board's recommendation and deny the renewal. Motion seconded by Commissioner Sturtz and it was unanimously approved.

RR22-23379 ROBERT WAYNE GRESHAM & BRENDA LEE GRESHAM, D/B/A B & B BAR AND GRILL – Chairman Heath noted this is a new type 221-3 application with the local board voting four (4) to zero (0) to approve.

Commissioner Guthrie moved to uphold the local board's recommendation and approve the new permit. Motion seconded by Vice Chairman Johnson and it was unanimously approved.

RH18-10136 VSD, LLC, D/B/A AMERICA'S BEST VALUE INN – Chairman Heath noted this is a type 215 renewal application with the local board voting four (4) to zero (0) to disapprove.

Commissioner Guthrie stated the permittee has repeated violations and did not appear at the local board meeting.

Commissioner Guthrie moved to uphold the local board's recommendation and deny the renewal. Motion seconded by Commissioner Sturtz and it was unanimously approved.

RR45-07913 JOMOOR, INC., D/B/A MO JO'S – Chairman Heath noted this is a type 210 renewal application with the local board voting three (3) to zero (0) to disapprove.

Commissioner Guthrie stated the local board's recommendation was based on the reputation and character of the permittee and the hostile attitude that was displayed against the Commission.

Commissioner Guthrie moved to uphold the local board's recommendation and deny the renewal. Motion seconded by Vice Chairman Johnson and it was unanimously approved.

### **INACTIVE FILES**

RC02-00140 AMERICAN LEGION POST 330 –

Chairman Heath - With respect to American Legion #330, permit no. RC02-00140, on June 13, 2006, the Legion entered into a settlement agreement with the Indiana Alcohol & Tobacco Commission admitting guilt to (i) illegal gambling; (ii) falsification of records; subterfuge; and, determination of reputation and character. The settlement agreement provided for (i) payment of fines in the amount of \$4,500.00; and, (ii) payment of the Commission's attorneys fees in the amount of \$110,000 as a result of the Legion's efforts to frivolously challenge the Commission's authority to regulate permittees engaged in illegal criminal activity. The Settlement Agreement was modified on August 23, 2006 to reflect adjusted legal fees in the amount of \$94,647.28. All fines, penalties and costs of enforcement were due to the Commission no later than October 2, 2006. The Legion defaulted on the First Amendment.

On October 19, 2007, four months after the original settlement agreement and at the Legion's request, the Commission entered into a Second Amendment to Settlement Agreement. The Second Amendment was signed on behalf of the Legion by Executive Board members Allen Girardot, I.H. Arnold, Thomas Kleber and Legion Commander, John V. Lacey. The Amendment reaffirmed all fines, penalties and attorney's fees provided for in the First Amendment. On or about October 19, 2007, the Legion remitted to the Commission \$10,000 in satisfaction of the fines and penalties and partial payment of the attorney fees. The balance of \$89,147.28 was due to the Commission no later than January 17, 2007. Pursuant to paragraph 6 of the Second Amendment, if the balance was not received by the Commission by the deadline, such default shall result in a breach of the second amendment and the permit shall be revoked immediately and without notice.

On January 12, 2007 and again on January 31, 2007, the Commission notified the Legion that unless the Legion fully complied with all terms of the Second Amendment no later than January 1, 2007, as of February 1, 2007 the Commission would immediately revoke the permit. The Legion did not comply with the terms of the Second Amendment and a pick up order was issued as of February 1, 2007. Since that time, the permit has been held by the Commission in escrow.

On September 4, 2007, at the request of the Legion, the Commission forwarded information related to the Second Amendment to Mike Mazur of National City Bank. It was the Commission's understanding that the Legion was working with National City to make arrangements to finally comply with the terms of the Second Amendment. However, on or about September 13, 2007, the Commission received correspondence from the Legion's attorney, Gregory Gadson requesting reinstatement of the permit. Based on the Legion's most recent actions, it is clear the Legion does not intend to comply with the provisions of the Second Amendment. Because of the Legion's flagrant violations of law, admission of guilt and repeated breaches of contract, it is appropriate for the Commission to consider permanent revocation of the permit. I will entertain a motion.

Commissioner Guthrie – Mr. Chairman, I move that we permanently revoke the American Legion's permit.

Vice Chairman Johnson – Second.

Chairman Heath – Motion carries.

Vice Chairman Johnson moved to make seven (7) permits inactive. Five (5) permits are not subject to auction and two (2) permits are subject to auction. Motion seconded by Commissioner Guthrie and it was unanimously approved.

## **OLD BUSINESS**

RR43-91544 THE BARBEE LANDING, INC. – Commissioner Guthrie stated this matter has been pending before the Commission for a period of time. The local board recommended denial and that denial was upheld by the Commission. An appeal was timely filed by the permittee; however, no tape recording was made of the local board proceedings, so the attorney for the permittee requested the commission remand the matter to the local board for reinvestigation.

Commissioner Guthrie stated there appears to be enough evidence in the record to support the local board's action, and; therefore, moved to proceed with the appeal hearing and deny the request for remand. Motion seconded by Commissioner Sturtz and it was unanimously approved.

## **NEW BUSINESS**

READOPTON OF RULES – Executive Secretary Choe stated the following rules were advertised for readoption: 905 IAC 1-1-1, 905 IAC 1-5.1, 905 IAC 1-5.2, 905 IAC 1-7.1-1, 905 IAC 1-9-5, 905 IAC 1-10, 905 IAC 1-12.1, 905 IAC 1-12.5, 905 IAC 1-13, 905 IAC 1-14, 905 IAC 1-15.2, 905 IAC 1-15.3-1, 905 IAC 1-16.1-3, 905 IAC 1-17, 905 IAC 1-18, 905 IAC 1-20-1, 905 IAC 1-21-1, 905 IAC 1-26, 905 IAC 1-27, 905 IAC 1-29-8, 905 IAC 1-30, 905 IAC 1-31, 905 IAC 1-32.1, 905 IAC 1-33.1-1, 905 IAC 1-34, 905 IAC 1-35, 905 IAC 1-36, 905 IAC 1-37, 905 IAC 1-38.

The Executive Secretary noted the Commission only received comments from Marc Carmichael of the Indiana Beverage Alliance regarding the readoption of 905 IAC 1-32.1. The comments were received well past the 30 day limit; however, the Commission did have discussions with Mr. Carmichael regarding this matter. After these discussions, the Commission's position regarding the readoption of 905 IAC 1-32.1 was to adopt the rule as is.

Executive Secretary Choe stated there was one other concern regarding 905 IAC 1-15.2-3. This was published to be readopted. The Executive Secretary introduced Indiana State Excise Major Robin Poindexter to address the Commission regarding this matter.

Major Poindexter stated the problem regarding 905 IAC 1-15.12-3 is that it is in direct conflict with IC 7.1-5-7-11 (16), and; therefore, he requested the Commission drop section (3) of 905 IAC 1-15.2-3. The major also stated that the Excise Police have developed a new law enforcement initiative so as to focus on other areas to restrict minors' access to alcohol and it appears to be successful.

Commissioner Guthrie moved to adopt the rules as published, without 905 IAC 1-15.2-3. Motion seconded by Vice Chairman Johnson and it was unanimously approved.

## **POLICY DETERMINATIONS**

No Policy Determinations

## **ANNOUNCEMENTS**

2007 ATC PERMIT AUCTION – Chairman Heath stated the auction is scheduled for October 25, 2007 at 11:00 .m. The information concerning the auction is posted on our website.

## **ADJOURNMENT**

Commissioner Sturtz moved to adjourn the meeting. Motion seconded by Commissioner Guthrie and it was unanimously approved.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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DAVE HEATH, CHAIRMAN

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DAVID JOHNSON, VICE CHAIR

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DALE STURTZ, COMMISSIONER

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FRANK GUTHRIE, COMMISSIONER